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RICHARD L. LAMBERT)	
)	
Plaintiff <i>Pro Se</i>)	
v.)	Civil Action No. 3:15-cv-147
)	(Reeves/Guyton)
UNITED STATES, <i>et al.</i> ,)	
)	
Defendants)	
)	

On November 18, 2015, the government filed Individual Federal Defendant Patrick Kelley's Motion to Dismiss and Memorandum in Support [ECF Doc. 33] seeking the dismissal of the *Bivens* causes of action in Plaintiff's Second Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

On December 9, 2015, Plaintiff filed Plaintiff's Reply Memorandum Opposing Individual Defendant Patrick Kelley's Motion to Dismiss [ECF Doc. 34].

On January 11, 2016, Defendant Kelley filed a Reply Brief in Support of Individual Federal Defendant Patrick Kelley's Motion to Dismiss [ECF Doc. 37].

Pursuant to Local Rule 7.1(d), Plaintiff respectfully moves the Court for leave to file a Supplemental Brief in response to the government's Reply Brief in Support of Individual Federal Defendant Patrick Kelley's Motion to Dismiss [ECF Doc. 37].

In an attempt to erect procedural barriers to an adjudication of this dispute on the merits, a great bulk of Defendant's argument is devoted to protests that Plaintiff's Second Amended Complaint does not meet the heightened pleading standard announced by the Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). Plaintiff will not recite in this motion the evidence which establishes the factual sufficiency and adequacy of his Complaint. That is the purpose of this request for the Court's permission to file a supplemental brief.

Plaintiff also notes for the record that procedural misconduct has occurred in this case because the government makes its Rule 12(b)(6) attack with unclean hands. On June 11, 2013, Defendants' agents seized, without a warrant, over 600 pages from Plaintiff's Franklin Covey calendar planner which document the dates, times, and details of meetings, communications, and events giving rise to this litigation. Plaintiff's Second Amended Complaint ¶ 40. Defendants have failed, refused, and otherwise declined to return it, depriving Plaintiff of his recorded recollections which would have permitted Plaintiff to plead his *Bivens* causes of action with even greater specificity and particularity than they have already been pled. Should the Court deem any aspect of Plaintiff's Complaint deficient in light of the *Twombly* and *Iqbal* pronouncements, Plaintiff will request leave of Court to amend his Complaint and will likewise move the Court to compel Defendants to return to Plaintiff his calendar planner to facilitate that effort. Defendants should not be permitted to pound the table top with one hand yelping "more facts!" while concealing under the table bottom with the other the very evidence they claim is absent. The Justice Department's propensity to play dog-in-the-manger with key evidence has been duly noted and criticized by the federal judiciary. It should not be countenanced here as subterfuge

for a 12(b)(6) motion. See U.S. Dep't of Justice, Office of Prof'l Responsibility, Report: Investigation of allegations of procedural misconduct in *United States v. Theodore F. Stevens*, Crim. No. 08-231 (D.D.C. 2009) (EGS) at 33-35 (Aug. 15, 2011), <http://www.leahy.senate.gov/imo/media/doc/052412-081511Report.pdf> (listing Honorable Judge Emmet G. Sullivan's criticisms of Justice Department lawyers for, *inter alia*, failing to provide material evidence to the other party and seeking to keep unfavorable evidence a secret).

Respectfully submitted,

/s/ Richard L. Lambert

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PLAINTIFF'S MOTION FOR LEAVE OF COURT TO FILE A SUPPLEMENTAL BRIEF IN RESPONSE TO DEFENDANTS' REPLY BRIEF IN SUPPORT OF INDIVIDUAL FEDERAL DEFENDANT PATRICK KELLEY'S MOTION TO DISMISS** was electronically filed with the Clerk of the Court on January 12, 2016 which provides electronic notification to all Filing Users. Plaintiff is not aware of any parties who are not Filing Users and should be served with a paper copy of the foregoing reply by first class, postage paid U.S. mail.

Dated: January 12, 2016

Signed: s/ Richard L. Lambert
Plaintiff